

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.

F.A.O. No.161 of 1988

Date of Decision:20.9.2006.

Bara Singh and others

....Appellants.

Versus

The State of Punjab and others

...Respondents.

**CORAM** : Hon'ble Mr.Justice M.M.Kumar.

Present:- Mr.Satinder Khanna,Advocate  
for the appellants.

Mr.S.K.Bhanot, Sr. DAG Punjab  
for respondents No.1 to 4.

Mr. Sanjiv Pabbi, Advocate  
for respondent No.5.

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**M.M.KUMAR, J.**

This appeal filed under Section 110-D of the Motor Vehicles Act, 1939, challenges the award dated 8.10.1987 passed by the Motor Accident Claims Tribunal, Ludhiana ( for brevity 'MACT'). The Tribunal has recorded findings that the claimant/appellants have not been able to prove the accident or the fact that the deceased Gurmukh Singh received injuries on account of rash and negligent driving of the bus by Kamikkar Singh, driver-respondent No.4. The Tribunal has further held that the claimant/appellants were the legal representatives of deceased Gurmukh Singh and that the income of deceased Gurmukh Singh was Rs.650/- per

month and the dependency has been worked out at Rs.200/- per month. A multiplier of 15 has been applied. The father of the deceased claimant/appellant No.1 has been found to be 50 years of age and mother of the deceased claimant/appellant No.2 has been found to be 45 years of age. The other claimants were the brother and sister. However, only Daljit Kaur, minor, who was 16 years of age, has filed the appeal being claimant/appellant No.3. The deceased was 23 years of age at the time of his death and was post graduate. Accordingly a multiplier of 15 was applied and a total claim of Rs.36,000/- as compensation was calculated. However, on account of the fact that the claimant/appellants had failed to prove the accident, their claim application was dismissed. It would be appropriate to make a reference to the analysis of evidence undertaken by the tribunal to reach the conclusion that the accident did not take place on 11.2.1987 at 5:30 p.m. The same reads as under:-

“In support of this issue, the claimants have examined Mohinder Singh, PW1. He has stated that on 11.2.1987 at about 5:30 PM he was coming on a Luna Moped on Moga-Ludhiana road and when he was at some distance from Aarti Cinema Chowk towards Moga side the bus came from the side of Moga which was being driven at a very fast speed and at that time the deceased was also going on a Luna Moped from the side of Moga and he was crushed by the bus driver under the bus when he was taking a turn on his right side near Aarti Cinema Chowk to go to Gurdev Nagar. In his cross-examination, he has stated that he did not see the deceased Gurmukh Singh going in front of him and he saw him for the

first time after the accident and that he reached the place of accident after 10 or 15 minutes of the accident. He has further admitted that it is correct that the place of accident is not visible to a person coming on a Luna Moped from the side of Jagraon as the accident took place on that side of the round about which faces Gurdev Nagar, Ludhiana.

The learned counsel for the claimants has argued that the accident stands proved from the statement of Mohinder Singh, PW1 as referred above. In reply to this argument, the learned counsel for the respondents have argued that no accident is proved from the statement of Mohinder Singh, PW1 as he has clearly admitted in his cross-examination that he reached the place of accident after about 10 or 15 minutes after the accident and the place of accident is not visible to a person coming on a Luna Moped coming from the side of Jagraon. This argument seems to be correct. In case Mohinder Singh PW1 reached the place of accident 10 or 15 minutes after the accident, then it means that he did not witness the accident. No other witness has been examined by the claimants to prove the accident. The case of the claimants is that one Jagdish Lal also witnessed the accident, but he has not been examined by them for the reasons best known to them. The respondents have examined Kamikkar Singh driver, respondent No.4 in rebuttal as PW1. He has denied the allegations that the accident took place with his bus. Under these circumstances, there is no evidence on the file to prove that the accident took place with the bus which was

being driven by Kamikkar Singh, driver respondent No.4 and Gurmukh Singh received injuries in that accident. Thus, this issue remains un-proved and is decided against the claimants.

During the pendency of the appeal, learned counsel for the claimant/appellants filed an application under Order 41 Rule 27 CPC with the prayer to place on record a copy of the FIR No.30 dated 11.2.1987, registered at Police Station Civil Line Ludhiana, an hour after the accident. The accident had taken place at 5:30 p.m. and the FIR was lodged at 6:45 p.m. Vide a separate order passed today, the afore-mentioned application has been allowed as it was not brought on record before the Tribunal.

Mr. Satinder Khanna, learned counsel for the claimant/appellants has argued that the approach adopted by the Tribunal in discarding the statement made by Mohinder Singh PW1 on the ground that he was not an eye witness as he reached the place of accident after 10-15 minutes is absolutely illegal. The version disclosed in the FIR would highlight that the deceased Gurmukh Singh was going in front of Mohinder Singh, the author of the FIR, on his Luna Moped bearing registration No.PJL 5057. Mohinder Singh was also following him on his own Luna No. PAL 9024. According to learned counsel, the statement made in the court was recorded after about 8 months and the detailed authentic version has been disclosed in the FIR lodged after about one hour. Learned counsel has emphasised that had the respondents desired, they could have confronted PW1 Mohinder Singh with this FIR where the version is different than the one disclosed in the statement made before the court. He has argued that once the driver of a vehicle is tried on account of rash and negligent driving it has to be prima-facie concluded that the accident was

caused on account of rash and negligent driving, therefore, learned counsel has argued that the findings recorded by the Tribunal on Issue No.1 are liable to be reversed and it must be held that the accident has been caused on account of rash and negligent driving by Kamikkar Singh, driver-respondent No.4.

Mr.S.K.Bhanot, learned State counsel has however, submitted that the tribunal has taken into account the statement made by the witness Mohinder Singh (PW1) admitting that he had reached the place of accident after 10 or 15 minutes and that the place of accident was not visible to a person coming on a Luna Moped from the side of Jagraon. So he has submitted that the FIR cannot be taken into consideration unless it is proved either by its author or any other person. Therefore, it has been suggested that the FIR cannot be taken into account at this stage and the findings deserve to be upheld.

Having heard learned counsel and perusing the record of the Tribunal, I am of the considered view that the findings recorded by the Tribunal cannot be sustained in the eyes of law. The Tribunal has stretched the statement of PW1 Mohinder Singh that he reached the place of accident 10-15 minutes later. The statement of Mohinder Singh PW1 infact nowhere suggests that he was not an eye witness to the accident. The relevant portions of the statement in chief and the cross-examination are as under:-

“On 11.2.87 at about 5:30 PM I was coming on the Moga Ludhiana road on a Luna Moped. When I was at some distance from Aarti Cinema towards Moga side, bus No.PJG 3108 came from the side of Moga. It was being driven at a very fast speed. Gurmukh Singh was also coming on a Luna Moped from the

side of Moga. He was ahead of the bus. When Gurmukh Singh was taking a turn on his right side near Aarti Cinema Chowk the bus crushed him to death. The bus was being driven by Kamikkar Singh driver. The bus driver did not blow the horn. The bus was out of his control on account of the high speed. Gurmukh Singh was aged about 23 years. He died at the spot. One Jagdish Lal witnessed the accident. At about 8 PM the dead body of Gurmukh Singh was taken by us to Civil Hospital, Ludhiana, where it was subjected to post mortem examination.-----

The accident took place in that chowk when Gurmukh Singh was negotiating a turn on his right side to go to Gurdev Nagar. It is incorrect to suggest that there is a bus stop on the Ludhiana Moga road in between Aarti Cinema chowk and the Aarti cinema and all the buses coming from the side of Moga stop on that bus stop. It is correct that there is a rickshaw stand in between Arti Cinema and the chowk on the left side of the road while coming from Moga. Aarti Cinema chowk is a thickly populated area and there is great rush of vehicles on that part of the road. It is incorrect to suggest that Gurmukh Singh was struck down by a truck who ran away and the bus was wrongly involved while bus was stationary on the bus stop. It is also incorrect to suggest that I was not present at the place and time of accident.-----

I had not stated in my police statement that I and the deceased were going to that side in connection with the business of our

shop. I did not see the deceased going in front of me. I saw him after the accident. I reached the place of accident 10 or 15 minutes after the accident. It is correct that the place of accident is not visible to a person coming on a Luna moped from the side of Jagraon as the accident took place on the side of the round about. The place of accident is that part of the round about of the chowk which faces Gurdev Nagar road. I saw him dead for the first time. Many persons had gathered there at the place of accident.-----”

A perusal of the statement made by PW1 Mohinder Singh would show that the deceased was going on his Luna Moped ahead of the bus and not in front of the bus. He further stated that the deceased was taking turn on his right side near Aarti Cinema Chowk and at that time the bus crushed him to death which was being driven by driver-respondent No.4. He reiterated the statement when cross-examined by the learned counsel for respondents No.1 to 3 and denied the suggestion that Gurmukh Singh infact had struck against the truck which ran away, while the bus was stationary on the bus stop or that he was not present at the place and time of accident. During the cross-examination by driver-respondent No.4 the witness has stated that he did not see the deceased going in front of him, but there was no contradiction between the examination-in-chief and cross-examination. As such as in the examination-in-chief the witness had stated that the deceased was going ahead of the bus. The witness further stated that he saw the deceased after the accident and had reached the place of accident 10 or 15 minutes after the accident. The afore mentioned statement made during cross-examination does not necessarily mean that the witness was

giving an eye witness account. In fact, the witness was explaining the circumstantial evidence which lead to an inference that the deceased was killed in the accident on account of rash and negligent driving of bus by driver Kamikkar Singh, respondent No.4. The afore mentioned version finds support from the contents of the FIR recorded after about one hour. It shows that driver-respondent No.4, after hitting Gurmukh Singh, the deceased, stopped the bus at a distance and on coming to know about the death of Gurmukh Singh-deceased, he had run away.

In these circumstances the statement made in the FIR if has been used for the purpose of contradiction can also be used for the purpose of corroboration. Such is the position of law under Section 162 of Criminal Procedure Code 1973. According to the proviso to Section 162(1) of Cr.P.C, if the statement made in the FIR is proved then the same may be used by the accused and with the permission of the Court by the prosecution to contradict a witness in the manner provided by Section 145 of Evidence Act, 1872 and that any part of the statement made in the FIR could also be used for corroboration. The principle incorporated by Section 162 Cr.P.C. would be applicable and the section itself *ipso-facto* may not apply. If that be so than the FIR and the statement made before the court read together would lead to only one conclusion that there were adequate circumstances supporting the inference that accident was caused by the offending bus which was being driven by Kamikkar Singh, driver-respondent No.4. Therefore, the findings recorded by the Tribunal are liable to be set aside. Even otherwise this court has held in the case of Girdhari Lal Vs. Radhey Sham reported as 1993(2) PLR 109 that once a driver has been tried of an offence of rash and negligent driving, it is prima-facie safe to conclude that



the accident had occurred on that account. I have also gone through the file of the Trial Court in Criminal Case No.137/2/87 which has been decided on 25.9.1992.

Once the findings are recorded that the accident was the result of rash and negligent driving, the other question which require consideration is whether Rs.36,000/- awarded by the Tribunal in favour of the claimant/appellants was sufficient. A perusal of the record shows that the deceased Gurmukh Singh was a student of LL.B as is evident from his identity card of Government College, Ludhiana, wherein his roll number has also been disclosed. The afore mentioned photocopy of identity card is available at Page 35 of the paper book. The Tribunal has proceeded on the assumption that he was drawing salary of Rs.650/- per month from a private school and would have parted with Rs.200/- to his parents, brother and sister. The Tribunal has failed to take into account the future prospectus of advancing his career by the deceased. He was a student of LL.B. and might have established his legal practice. Therefore, his salary at the rate of Rs.650/-, as a Teacher, could not have been the correct reflection of his income. The formula and the principles for working out the prospective income of a deceased have been explained in some details in G.M.Kerala SRTC Vs. Susama Thomos (1994) 2-SCC 176 and Sarla Dixit Vs. Balwant Yadav (1996)3-SCC 179. Following the afore mentioned principles the income of the deceased would work out as  $650 \times 3 - 2 = 975$ , which can be rounded to Rs.1000/-. The deceased would have contributed Rs.350/- per month to the claimant/appellants and the annual dependency comes to Rs.4200/-. A multiplier of 15 if applied then the total amount comes to Rs.63000/-.

In view of the afore mentioned findings, the award of the Tribunal is modified and an amount of Rs.63000/- along with 10% interest is awarded to the claimant/appellants. The claimant/appellants No.1 & 2 are to apportion the award to the extent of 35% each and claimant/appellant No.3 along with claimant/respondents No.6 & 7 are awarded 10% each. The whole liability has to be discharged by respondents No.1 to 4 as respondent No.5 was merely an insurance company of the Moped.

The appeal stands disposed of in the above terms.

**(M.M.KUMAR)**  
**JUDGE**

Sept 20,2006.  
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